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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

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11 PAMELA SUE HARRIS

12 Plaintiff

13 v.

14 NANCY A. BERRYHILL, Acting  
15 Commissioner of Social Security,

16 Defendant.

Case No. 5:17-cv-00273-GJS

**MEMORANDUM OPINION AND  
ORDER**

17 **I. PROCEDURAL HISTORY**

18 Plaintiff Pamela Sue Harris (“Plaintiff”) filed a complaint seeking review of  
19 Defendant Commissioner of Social Security’s (“Commissioner”) denial of her  
20 application for Disability Insurance Benefits (“DIB”). The parties filed consents to  
21 proceed before the undersigned United States Magistrate Judge [Dkts. 11, 12] and  
22 briefs addressing disputed issues in the case [Dkt. 22 (“Pltf.’s Br.”) and Dkt. 23  
23 (“Def.’s Br.”), Dkt. 25 (“Pltf.’s Reply).] The Court has taken the parties’ briefing  
24 under submission without oral argument. For the reasons set forth below, the Court  
25 affirms the decision of the ALJ and orders judgment entered accordingly.

26 **II. ADMINISTRATIVE DECISION UNDER REVIEW**

27 On September 23, 2013, Plaintiff filed an application for DIB. [Dkt. 15,  
28 Administrative Record (“AR”) 18, 148-149.] The Commissioner denied her initial

1 claims for benefits on January 27, 2014, and upon reconsideration on April 10,  
2 2014. [*Id.*] On February 17, 2016, a hearing was held before Administrative Law  
3 Judge (“ALJ”) John W. Wojciechowski. [AR 31-55.] On March 16, 2016, the ALJ  
4 issued a decision denying Plaintiff’s request for benefits. [AR 17-31.] Plaintiff  
5 requested review from the Appeals Council, which denied review on December 12,  
6 2016. [AR 1-7.]

7 Applying the five-step sequential evaluation process, the ALJ found that  
8 Plaintiff was not disabled. *See* 20 C.F.R. §§ 404.1520(b)-(g)(1). At step one, the  
9 ALJ concluded that Plaintiff had not engaged in substantial gainful activity since  
10 November 3, 2011, the alleged onset date, through September 30, 2013, her date last  
11 insured. [AR 20.] At step two, the ALJ found that Plaintiff suffered from the  
12 following severe impairment: degenerative disc disease of the lumbar spine. [*Id.*  
13 (citing 20 C.F.R. §§ 404.1520(c)).] Next, the ALJ determined that Plaintiff did not  
14 have an impairment or combination of impairments that meets or medically equals  
15 the severity of one of the listed impairments. [AR 21 (citing 20 C.F.R. Part 404,  
16 Subpart P, Appendix 1; 20 C.F.R. §§ 404.1520(d), 404.1525, and 404.1526).]

17 The ALJ found that Plaintiff had the following residual functional capacity  
18 (RFC):

19 [L]ight work as defined in 20 CFR 404.1567(b)...  
20 [s]pecifically, the claimant was able to lift and carry 20  
21 pounds occasionally, 10 pounds frequently; could sit for 6  
22 hours out of an 8 hour day, all normal breaks. She could  
23 occasionally perform postural activities such as climb,  
24 balance, stoop, kneel, crouch and crawl, but could never  
use ladders, ropes, and scaffolds. She had to avoid  
concentrated exposure to extreme heat, cold, vibrations,  
and industrial hazards[.]

25 [AR 22.] Applying this RFC, the ALJ found that Plaintiff could perform past  
26 relevant work as a receptionist (DOT 237.367-038), and, thus, is not disabled. [AR  
27 25.]

### III. GOVERNING STANDARD

Under 42 U.S.C. § 405(g), the Court reviews the Commissioner's decision to determine if: (1) the Commissioner's findings are supported by substantial evidence; and (2) the Commissioner used correct legal standards. *See Carmickle v. Comm'r Soc. Sec. Admin.*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Hoopai v. Astrue*, 499 F.3d 1071, 1074 (9th Cir. 2007). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (internal citation and quotations omitted); *see also Hoopai*, 499 F.3d at 1074.

### IV. DISCUSSION

Plaintiff's sole claim is that the ALJ improperly found Plaintiff's testimony not fully credible. [Pltf.'s Br. at 3-13.]

Plaintiff testified that she was unable to work because of limits on her ability to sit, stand, and walk. [AR 39.] When asked about her ability to walk, Plaintiff replied that she was unable to walk for more than a quarter of a mile and that she experienced pain walking down her driveway. [AR 47.] Plaintiff also testified that she could sit for five to twenty minutes and stand for five to twenty minutes at a time. [AR 48-49.] Plaintiff reported that her mother drives her to the grocery store and helps her do the laundry. [AR 46.] Plaintiff makes her own breakfast, walks, and does exercises. [AR 46-47.] Plaintiff stated that she can lift a gallon of milk and occasionally uses the computer. [AR 47, 49.]

The ALJ found Plaintiff's subjective symptom testimony not fully credible. [AR 22.] The ALJ noted that although Plaintiff's medically determinable impairments could reasonably be expected to cause some of Plaintiff's alleged symptoms, Plaintiff's allegations concerning the intensity, persistence, and limiting effects of her symptoms were not credible to the extent alleged. [*Id.*] "Where, as here, an ALJ concludes that a claimant is not malingering, and that she has provided objective medical evidence of an underlying impairment which might reasonably

1 produce the pain or other symptoms alleged, the ALJ may ‘reject the claimant’s  
2 testimony about the severity of her symptoms only by offering specific, clear and  
3 convincing reasons for doing so.’” *Brown-Hunter v. Colvin*, 806 F.3d 487, 492-93  
4 (9th Cir. 2015) (quoting *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir.  
5 2007)). Even if “the ALJ provided one or more invalid reasons for disbelieving a  
6 claimant’s testimony,” if he “also provided valid reasons that were supported by the  
7 record,” the ALJ’s error “is harmless so long as there remains substantial evidence  
8 supporting the ALJ’s decision and the error does not negate the validity of the ALJ’s  
9 ultimate conclusion.” *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)  
10 (internal quotation omitted).

11 “The ALJ may consider many factors in weighing a claimant’s credibility,  
12 including (1) ordinary techniques of credibility evaluation, such as the claimant’s  
13 reputation for lying, prior inconsistent statements concerning the symptoms, and  
14 other testimony by the claimant that appears less than candid; (2) unexplained or  
15 inadequately explained failure to seek treatment or to follow a prescribed course of  
16 treatment; and (3) the claimant’s daily activities.” *Tomasetti v. Astrue*, 533 F.3d  
17 1035, 1039 (9th Cir. 2008) (internal citations and quotations omitted); *see also*  
18 *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th Cir. 2002) (explaining that  
19 acceptable bases for credibility determination include (1) the claimant’s reputation  
20 for truthfulness; (2) inconsistencies in the claimant’s testimony or between his  
21 testimony and conduct; (3) claimant’s daily living activities; (4) claimant’s work  
22 record; and (5) testimony from physicians or third parties concerning the nature,  
23 severity, and effect of claimant’s condition).

24 Here, the ALJ gave four reasons to reject Plaintiff’s credibility: (1) Plaintiff’s  
25 symptoms improved with treatment; (2) Plaintiff’s poor work history; (3) Plaintiff’s  
26 conservative treatment; and (4) lack of objective evidence to support Plaintiff’s  
27 claim of severe limitations. As discussed below, the ALJ offered legally sufficient  
28 reasons to support the adverse credibility determination.

1 First, the ALJ found that Plaintiff's symptoms significantly improved with  
2 treatment. The effectiveness of treatment and medications in controlling Plaintiff's  
3 symptoms is a valid reason for discrediting a claimant's testimony. *See Tommasetti*  
4 *v. Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008) (finding that the ALJ properly  
5 rejected claimant's subjective complaints where medical records showed that she  
6 responded favorably to conservative treatment of physical therapy and medication);  
7 *Warre v. Comm'r Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006)  
8 ("Impairments that can be controlled effectively with medication are not  
9 disabling[.]"). Here, Plaintiff received epidural steroid injections for her back. [AR  
10 233, 245, 247, 259, 262-263, 265.] The ALJ observed that in September 2012  
11 Plaintiff had epidural injections and reported that they "significantly reduced the  
12 back pain." [AR 23, 247.] At a May 2013 examination, Plaintiff reported that an  
13 epidural injection in the past had provided "excellent pain relief for nearly 1-2  
14 years." [AR 23, 245.] Plaintiff does not dispute this, but argues that a doctor's note  
15 from October 2013 (outside the relevant period for DIB) indicated that Plaintiff had  
16 chronic back pain. [Reply at 4.] However, as the ALJ pointed out, Plaintiff "had  
17 not had any [epidural steroid injections] in the last couple of years." [AR 23.] In  
18 fact, a medical note from a month prior, September 2013, indicated that Plaintiff  
19 "revealed that she has not proceeded with the injection." [See AR 286-287.] Thus,  
20 the record reflects that Plaintiff's failure to receive recommended treatment may  
21 have contributed to her back pain in October 2013. Accordingly, the Court finds  
22 that the medical record supports the ALJ's conclusion that Plaintiff's pain and  
23 symptoms caused by degenerative disc disease of the lumbar spine improved with  
24 epidural steroid injections and, therefore, this was a clear and convincing reason to  
25 discount Plaintiff's credibility.

26 Second, the ALJ asserted that Plaintiff's limited work history was a clear and  
27 convincing reason to reject Plaintiff's testimony. [AR 24.] Plaintiff does not  
28 dispute this reasoning, but states that her work history cannot be the sole reason to

1 find Plaintiff not fully credible.<sup>1</sup> [Pltf.'s Br. at 11 (*citing Floyd v. Astrue*, 2010 WL  
2 2196120, at p. \*8 (S.D. Cal. 2010).]

3 An ALJ may properly consider a claimant's poor or nonexistent work history  
4 in making a negative credibility determination. *Thomas v. Barnhart*, 278 F.3d 947,  
5 958-59 (9th Cir. 2002) (internal quotation omitted) ("The ALJ may consider at least  
6 the following factors when weighing the claimant's credibility...[her] work  
7 record"); *see, e.g., Aarestad v. Comm'r of Soc. Sec.*, 450 Fed. App'x. 603, 604 (9th  
8 Cir. 2011) (unpublished) (affirming ALJ's determination of claimant's testimony as  
9 partially not credible where claimant "worked only sporadically before the alleged  
10 onset of disability (which suggests that her decision not to work was not based on  
11 disability)"); *Burkstrand v. Astrue*, 346 Fed. App'x. 177, 179 (9th Cir. 2009)  
12 (unpublished) ("limited work history" negatively impacted credibility). Here, the  
13 ALJ found that "there are very few years before 2011 that the claimant ever worked  
14 for an entire year at substantial gainful activity level" and, thus, "one would  
15 question if claimant's impairments are the primary reason she is currently  
16 unemployed." [AR 24.] The Detailed Earnings Query reflects extremely limited  
17 earnings between 2003 and 2011. [AR 152.] "For example, [Plaintiff's] earnings in  
18 2003 were only \$1386 and in 2006 she earned \$958 for the entire year. In 2010 she  
19 only earned \$50." [AR 24; *see also* AR 152] The ALJ was entitled to determine  
20 from Plaintiff's pre-disability period work history (or lack thereof) that she lacked  
21 motivation to work. Indeed, the Ninth Circuit has expressly approved of an ALJ  
22 rejecting a claimant's credibility when the claimant's "extremely poor work history"  
23 reflecting "little propensity to work in her lifetime"—*i.e.*, where a claimant's "work  
24 history was spotty, at best, with years of unemployment between jobs, even before  
25 she claimed disability. *Thomas*, 278 F.3d at 959. Thus, the ALJ properly relied on  
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28 <sup>1</sup> The Court need not address this argument because the Court finds that the ALJ had  
at least two well-supported reasons for discounting Plaintiff's testimony in this case.

1 Plaintiff's work history in discounting her credibility.

2 Finally, Plaintiff asserts that the ALJ improperly relied on a lack of objective  
3 evidence and conservative treatment history to discredit her testimony. [Pltf.'s Br.  
4 at 12-13.] She argues that there was evidence in the record that substantiated her  
5 physical impairment and established that her treatment, which included epidural  
6 steroid injections, was not conservative. [*Id.* (citing AR 233-235, 247).] However,  
7 because the Court has already determined that sufficient evidence supported the  
8 ALJ's decision to discount Plaintiff's subjective complaints, it need not determine  
9 whether the ALJ materially erred in considering these other reasons for discrediting  
10 Plaintiff's testimony. See *Carmickle v. Commissioner*, 533 F.3d 1155, 1162-63 (9th  
11 Cir. 2008) (finding an error by the ALJ with respect to one or more factors in a  
12 credibility determination may be harmless if the ALJ's "remaining reasoning and  
13 ultimate credibility determination were adequately supported by substantial  
14 evidence in the record" (citing *Batson v. Comm'r Soc. Sec. Admin.*, 359 F.3d 1190,  
15 1197 (9th Cir. 2004))).

16 Accordingly, the Court concludes that the ALJ provided clear and convincing  
17 reasons, supported by substantial evidence, for finding Plaintiff less than fully  
18 credible, and thus, there is no error warranting reversal and remand.

## 19 V. CONCLUSION

20 For all of the foregoing reasons, **IT IS ORDERED** that the decision of the  
21 Commissioner finding Plaintiff not disabled is **AFFIRMED**.

22  
23 **IT IS SO ORDERED.**

24  
25 DATED: November 22, 2017

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28 GAIL J. STANDISH  
UNITED STATES MAGISTRATE JUDGE